IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH
S.B. Civil Writ Petition No.485/97
Hem Chand Govil
Vs.
Income Tax Settlement Commission & Ors.

13.3.2007

Hon'ble Mr.Justice Mohammad Rafiq

Shri G.S. Bapna for petitioner.
Shri R.B. Mathur for respondents.

REPORTABLE

Under challenge in this writ petition is the order dated 30.9.1996 passed by the Settlement Commissioner whereby application of the petitioner filed under Section 245C of the Income Tax Act, 1961 (in short `the Act') was rejected and not allowed to be proceeded with.

Factual matrix of the case is that the business and residential premises of the petitioner were searched by the respondents in accordance with the

provisions of section 132(1) of the Act on 21.3.90. During the course of search proceedings, certain incriminating documents were found at these premises. An order was later passed u/s. 132(5) of the Act on 13.7.90. Notice under Section 148 was issued to the petitioner on 30.4.91 in respect of the assessment year 1989-90 because the petitioner by that time had not filed the return under Section 139(1) of the Act. Pursuant to the said notice, the petitioner filed his return of income tax for the assessment year 1989-90 on 15.5.91 declaring total income tax of Rs.18,289/-. The petitioner then filed return of income tax under Section 139(1) of the Act for the assessment year 1990-91 on 31.3.92. The Assessing Authority first took up the assessment for the year 1990-91 and by order dated 10.2.93 determined

the total income of the petitioner as Rs.28,15,375/- in respect of that assessment year. Feeling aggrieved thereby, the petitioner filed an appeal before the CIT(Appeals). The CIT(Appeals) however by his order dated 15.10.93 held that the two additions made by the Assessing Officer were not relevant in respect of the assessment year 1990-91. He however further held that these additions could be relevant for the assessment year 1989-90. Aggrieved by the order of the CIT (Appeals) dated 15.10.93, the petitioner as well as revenue both filed further appeals before Income Tax Appellate Tribunal. In the meanwhile, assessment proceedings in respect of assessment year 1989-90 were taken up by the Assessing Officer who made two additions of Rs.11,21,000/- and Rs.12,64,564/-

respectively in the income of the petitioner vide his order dated 30.3.94. The petitioner thereupon filed an appeal before the CIT(Appeals) against the said order dated 30.3.94, passed in respect of assessment year 1989-90, on the ground of invalidity of the notice u/s. 148 and the same was set aside by CIT(Appeals) by order dated 31.3.95. The assessment proceedings for the assessment year 1989-90 was said to be pending before the Assessing Officer when the writ petition was filed but in the meantime the petitioner filed an application u/s. 245 (C) of the Act on 14.11.95 in regard to the assessment year 1989-90 for being settled before the Settlement Commission. The Settlement Commission after hearing both assessee as well as revenue by order dated 30.9.96 held that in view of the

complexity of the investigation involved, the application for settlement about the assessment year 1989-90 does not deserve to be proceeded with because disputed matters have already reached to Income Tax Appellate Tribunal (for short- `the Tribunal') which is the final appellate authority on questions of facts and its findings will finally decide the issues regarding disputed additions and also the issue of assessability. Further, the Settlement Commission was not persuaded to proceed with the application of the petitioner on the premise that since the petitioner has already chosen the normal appeal procedure for both the assessment years one of which was covering part of the dispute in the application before them and the other having been appealed against before the CIT(Appeals) in respect of

assessment year 1989-90, this was not a fit case to proceed in the matter.

I have heard Shri G.S. Bapna, the learned counsel for the petitioner and Shri R.B. Mathur, the learned counsel for the revenue.

Shri G.S. Bapna, the learned counsel for the petitioner argued that the sole basis on which the Settlement Commission refused to proceed with the matter was the complexity of the investigation and pendency of the appeal before the Income Tax Appellate Tribunal. He argued that two additions made in respect of the petitioner’s income for the assessment year 1989-90 was based on conclusions arrived at by the CIT(Appeals) while deciding the appeal of the petitioner against the assessment order of the assessment year 1990-91. Appeal of the

petitioner against the said order was allowed at least in respect of those findings by the Income Tax Appellate Tribunal vide its order dated 4.6.2001 in ITA No.1757/JP/93 and 1796/JP/93. Shri Bapna has placed copy of the judgment on record before this Court. In para 8 of which the Tribunal while dealing with two additions in the income of the petitioner based on the observation made by the CIT (Appeals) in his order dated 15.10.1993 observed as under:-

> “8. We have carefully considered the rival submissions of the parties, perused the material available on record and the case laws relied upon by the ld. A.R. We find that the addition of Rs.11,21,000/- was made by the AO as undisclosed investment made by the assessee in respect of purchase of front portion of the property, known as 24, Surya Bhawan, Ajmer Road, Jaipur. This addition

was made by the AO on the basis of seized paper page No.10 of Exhibit B-1, contending to be payments mentioned along with dates. According to the assessee, the property was purchased for a sum of Rs.9 lakhs, the payment of which was made by the assessee on 20.6.1988 Rs.25,000/-, 24.6.1988 Rs.2,00,000/-, 1.9.1988 Rs.65,000/- and Rs.1,00,000/- aggregating to Rs.3,90,000/- and the balance amount of Rs.5,10,000/- was paid on 7.1.1991. According to the revenue, all the payments of Rs.15,11,000/- were made from 20.6.1988 to 10.3.1989 and after deducting the payments as shown by the assessee Rs.3,90,000/- upto 1.9.1988, the addition of Rs.11,21,000/- was made in the year under appeal. Since all the dates fall in the financial year 1988-89, relevant to assessment year 1989-90, therefore, no addition can be made as undisclosed investment in the front portion of the property in the assessment year under appeal,

i.e., assessment year 1990-91 and to this extent, the findings of the CIT (A) are confirmed. However, the CIT (Appeals) has given a finding that the said amount was liable to be considered in assessment year 1989-90. Such a finding by the CIT (Appeals) is unjust and un-called for in view of the fact that the issue for assessment year 1989-90 was not before him for adjudication. Accordingly, such a finding given by him is hereby directed to be reversed. Under such circumstances, any decision rendered by the CIT (Appeals) on merits to the fact that it was investment by the assessee in assessment year 1989-90, is also directed to be reversed. Since the addition cannot be sustained legally in the assessment year 1990-91 in appeal before us, we do not consider it necessary to decide the issue on merits of the case. However, the AO shall be at liberty to take any action as he may consider appropriate under any of the

enabling provisions of the Act. Accordingly, Ground Nos. 1, 2 and 3 raised by the assessee in his appeal and revenue's ground on the addition of Rs.11,21,000/- in Ground No.1 stand disposed of."

Shri R.B. Mathur, the learned counsel for the revenue however although supported the judgment of the Settlement Commission but could not deny the fact that the appeal of the petitioner against the order passed by CIT(Appeals) dated 15.10.1993 was partly allowed and the finding recorded by the CIT(Appeals) in respect of those two additions in the income of the petitioner, was held to be unjust and uncalled for. But he prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by

learned counsel for the parties and perused the material on record.

Findings recorded by the Tribunal in the aforesaid appeals filed by the assessee as well as revenue should not detain me longer to observe that the Tribunal itself has held the observations made by the CIT(Appeals) in his order dated 15.10.1993 as to those two additions made in the income of the petitioner assessee as unjust and uncalled for in view of the fact that the issue for assessment year 1989-90 was not before him for adjudication. Those findings were therefore ordered to be expressly reversed by the Tribunal and further direction was given that any decision rendered by the CIT(Appeals) on merits to the effect that it was investment by the assessee in the assessment year 1989-90 should also stand

reversed. If that was the foundation of the decision of the Settlement Commission not to proceed in the matter because of the complexity of the investigation, that finding having now been reversed, is no longer available as impediment in law, if there was one, to proceed with the matter and decide it in accordance with law on the basis of that finding alone. In the facts and circumstances of the case, therefore I find that conclusions arrived at by the Settlement Commission no longer remain valid in view of the subsequent developments. The matter therefore requires a fresh consideration at the end of the Settlement Commission itself rather than this Court further adjudicating upon the controversy. In view of the conclusions arrived at by the Tribunal that the findings recorded by the CIT

(Appeals) were unjust and uncalled for and therefore they were liable to be reversed and were accordingly reversed, it would be only appropriate that the Settlement Commission reconsiders the entire matter afresh.

For what has been discussed above, the order passed by the Settlement Commission is set aside and the matter is remanded back to the Settlement Commission to decide it afresh in the light of the discussion made above keeping in view the observations made by the Tribunal. The writ petition is accordingly allowed though with no order as to costs.

RS/ (Mohammad Rafiq),J.